

LEGISLATIVE BILL 917

Approved by the Governor April 18, 2022

Introduced by Wayne, 13.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2717 and 77-2734.03, Revised Statutes Cumulative Supplement, 2020, and sections 77-2701 and 77-2715.07, Revised Statutes Supplement, 2021; to provide an income tax credit for certain wages paid to individuals convicted of a felony; to provide duties for the Department of Revenue; to define a term; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-2701, Revised Statutes Supplement, 2021, is amended to read:

77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235, 77-27,236, 77-27,238, and 77-27,239 and section 2 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 2. (1) For taxable years beginning or deemed to begin on or after January 1, 2023, under the Internal Revenue Code of 1986, as amended, an employer that employs an eligible employee during the taxable year shall be eligible to receive a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967.

(2) The credit provided in this section shall be an amount equal to ten percent of the wages paid by the employer to the eligible employee during the taxable year, except that:

(a) The credit shall only be allowed with respect to wages paid during the first twelve months of the eligible employee's employment with the employer; and

(b) The total credit taken pursuant to this section with respect to any one eligible employee shall not exceed twenty thousand dollars.

(3) An employer shall apply for the credit provided in this section by submitting an application to the Department of Revenue on a form prescribed by the department. The application shall include:

(a) The number of eligible employees employed by the employer during the taxable year;

(b) The amount of wages paid to each such eligible employee during the taxable year; and

(c) Any other information required by the department to verify the employer's eligibility for the credit.

(4) Subject to subsection (5) of this section, if the Department of Revenue determines that the employer qualifies for a tax credit under this section, the department shall approve the application and certify the amount of the approved credit to the employer.

(5) The Department of Revenue shall consider applications in the order in which they are received and may approve tax credits under this section each year until the total amount of approved credits reaches five million dollars.

(6) The Department of Revenue may adopt and promulgate rules and regulations to carry out this section.

(7) For purposes of this section, eligible employee means an individual who has been convicted of a felony in this or any other state.

Sec. 3. Section 77-2715.07, Revised Statutes Supplement, 2021, is amended to read:

77-2715.07 (1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such nonrefundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction

thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Volunteer Emergency Responders Incentive Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 32 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

(d) A credit as provided in the New Markets Job Growth Investment Act;

(e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act;

(f) A credit to employers as provided in section 77-27,238 and section 2 of this act; and

(g) A credit as provided in the Affordable Housing Tax Credit Act.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (6) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

(6) There shall be allowed to all individuals nonrefundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3604 and refundable credits against the income tax imposed by the

Nebraska Revenue Act of 1967 as provided in section 77-3605.

(7)(a) For taxable years beginning or deemed to begin on or after January 1, 2020, and before January 1, 2026, under the Internal Revenue Code of 1986, as amended, a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 in the amount of five thousand dollars shall be allowed to any individual who purchases a residence during the taxable year if such residence:

(i) Is located within an area that has been declared an extremely blighted area under section 18-2101.02;

(ii) Is the individual's primary residence; and

(iii) Was not purchased from a family member of the individual or a family member of the individual's spouse.

(b) The credit provided in this subsection shall be claimed for the taxable year in which the residence is purchased. If the individual cannot fully utilize the credit for such year, the credit may be carried forward to subsequent taxable years until fully utilized.

(c) No more than one credit may be claimed under this subsection with respect to a single residence.

(d) The credit provided in this subsection shall be subject to recapture by the Department of Revenue if the individual claiming the credit sells or otherwise transfers the residence or quits using the residence as his or her primary residence within five years after the end of the taxable year in which the credit was claimed.

(e) For purposes of this subsection, family member means an individual's spouse, child, parent, brother, sister, grandchild, or grandparent, whether by blood, marriage, or adoption.

(8) There shall be allowed to all individuals refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in the Nebraska Property Tax Incentive Act and the Renewable Chemical Production Tax Credit Act.

(9)(a) For taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended, a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 shall be allowed to the parent of a stillborn child if:

(i) A fetal death certificate is filed pursuant to subsection (1) of section 71-606 for such child;

(ii) Such child had advanced to at least the twentieth week of gestation; and

(iii) Such child would have been a dependent of the individual claiming the credit.

(b) The amount of the credit shall be two thousand dollars.

(c) The credit shall be allowed for the taxable year in which the stillbirth occurred.

Sec. 4. Section 77-2717, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-2717 (1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (A) substituting Nebraska taxable income for federal taxable income, (B) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (C) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result. The credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238 and section 2 of this act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238 and section 2 of this act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Property Tax Incentive Act, the Renewable Chemical Production Tax Credit Act, and section 77-27,238 and section 2 of this act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Property Tax Incentive Act, the Renewable Chemical Production Tax Credit Act, and section 77-27,238 and section 2 of this act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. For taxable years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of

Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

Sec. 5. Section 77-2734.03, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-2734.03 (1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238 and section 2 of this act.

Sec. 6. Original sections 77-2717 and 77-2734.03, Revised Statutes Cumulative Supplement, 2020, and sections 77-2701 and 77-2715.07, Revised Statutes Supplement, 2021, are repealed.